

Exhibit 44

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IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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)
In re)
) Chapter 11
)
LEHMAN BROTHERS) Case No.
)
HOLDINGS INC., et al.,) 08-13555 (JMP)
)
) (Jointly Administered)
Debtors.)
)
)
-----)

VIDEO DEPOSITION UPON ORAL EXAMINATION
of

PAMELA KENDALL

On Thursday, 20th June 2013

Taken at the offices of:
Weil Gotshal & Manges LLP,
110 Fetter Lane,
London EC4A 1AY,
England

Reported by: Richard Harper

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2 building and so forth?

3 A. Well, on September 30th, LBL had
4 also agreed that we acknowledged -- without the
5 wording in front of me I cannot be precise -- that
6 they were happy with our making a claim of 262,
7 plus or minus 5%, in the LBHI administration and
8 those e-mails, the exchange, was made in the
9 context that LBL recognise the importance of our
10 claim against LBHI and documentation would need to
11 be structured in such a way as to preserve our
12 ability to make that claim.

13 Q. Why did that involve having to make
14 a claim in that amount against LBL, if you know?

15 A. Because LBHI were making it a
16 condition of the stipulation.

17 Q. Do you know why?

18 A. No, I don't. Sorry, could I add to
19 that, to say that I understand that there may have
20 been set off issues between LBL and LBHI.

21 Q. Do you know how much unpaid rent,
22 if any, there was as of September 30, 2010?

23 MR. DE LEEUW: Objection to form.

24 BY MR. ISAKOFF:

25 Q. All right, I will change it to, any

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2 unpaid amounts on the LBL lease?

3 MR. DE LEEUW: Still objection to
4 form.

5 A. Unpaid amounts on the LBL lease,
6 well they had ceased paying their rent, they
7 ceased in part in January of that year and they
8 stopped paying the rent entirely as of March.

9 BY MR. ISAKOFF:

10 Q. My question is, do you know how
11 much was outstanding in respect of the LBL lease
12 as of September 30, 2010, counting all payments
13 that had been made, whether by LBL itself or by
14 sub-tenants?

15 A. Well, the amounts that were owed by
16 LBL -- I would have to look at the documents to be
17 precise. I know that -- I think there is a figure
18 of 18 million on one of PWC's -- but I would have
19 to look.

20 Q. I am going to direct your attention
21 again to exhibit 33, which is the October 28, 2010
22 memo from Mr. Iacobescu to the Canary Wharf board.
23 Did you play any part in drafting this memo?

24 A. No, I didn't draft that memo.

25 Q. Would you turn please to the page

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2 in this October 28 memorandum to the board?

3 A. I don't know.

4 Q. Did you think it was false?

5 A. I don't know. I was not involved
6 in drafting the memo.

7 Q. Did you have any communications
8 with JP Morgan Chase concerning settlement
9 discussions with LBHI?

10 A. They were aware that we were
11 settling with LBHI.

12 Q. That is not my question.

13 A. Sorry.

14 Q. Did you have any communications
15 with JP Morgan Chase -- you, Pamela Kendall ----

16 A. Me?

17 Q. -- have any communications with
18 JP Morgan Chase concerning settlement discussions
19 with LBHI?

20 A. Nothing specific that I can
21 remember. I have no doubt that at the meetings
22 that took place during the course of negotiations,
23 reference may have been made at some point during
24 those meetings to settlement with LBHI.

25 Q. When, for the first time, if you

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2 recall, did Canary Wharf consider the option of
3 forfeiture rather than surrender in connection
4 with the LBL lease?

5 A. When negotiations for the surrender
6 broke down ----

7 Q. When did that -- I am sorry.

8 A. -- so that was after receipt of the
9 draft stipulation that we got from LBHI and LBL's
10 response to the revised documentation put to them.
11 I cannot give you an exact date, other than to say
12 November?

13 Q. What is the reason why forfeiture
14 was not considered at an earlier stage, if any?

15 MR. DE LEEUW: Objection to form.

16 Go ahead.

17 A. Surrender was the preferred route.
18 It is a consensual arrangement between the parties
19 and forfeiture would also -- I mean, to take
20 forfeiture proceedings against a company in
21 administration you first have to get leave of the
22 court under English law. It had its additional
23 complications.

24 BY MR. ISAKOFF:

25 Q. There was a forfeiture agreement

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2 that was consensual between the parties without
3 leave of the court on December 3, 2010?

4 A. Correct.

5 Q. Why was that route not considered
6 earlier, if it was not?

7 A. Because we thought we could come to
8 an agreement with LBL and that is hence the
9 surrender document, is a consensual arrangement
10 between the parties.

11 Q. Isn't it fair to say that the
12 forfeiture agreement of December 3, 2010 was
13 consensual between the parties?

14 A. Yes, but generally a forfeiture is
15 a unilateral action taken by the landlord, in the
16 case of tenant default.

17 Q. Okay. In this circumstance, where
18 Canary Wharf did not want to take unilateral
19 action, is there a reason why it did not consider
20 a consensual forfeiture, such as was entered into,
21 prior to the time that, as you say, negotiations
22 over a surrender document broke down?

23 A. No, because there was no need to,
24 if you like, because we thought we could reach an
25 amicable agreement, based on a surrender with LBL,

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2 so there was no need to look at alternative ways
3 of documenting this.

4 Q. I am going to show you what was
5 previously marked as exhibit 34. For the record,
6 this is CW 775 to 806, which is an e-mail
7 enclosing a letter and a draft deed of surrender
8 from Sarah Dawson, of Clifford Chance, to Beatrice
9 Taylor, at Linklaters. Have I accurately
10 characterised the document?

11 A. I am sorry, could you repeat that
12 again? I am sure you have but ----

13 Q. Why don't you just tell me what the
14 document is. I am trying to move things
15 along ----

16 MR. DE LEEUW: She was reviewing it
17 while you were asking ----

18 MR. ISAKOFF: Well, I can only do
19 what I can do.

20 BY MR. ISAKOFF:

21 Q. Why don't you tell me that the
22 document is?

23 A. That is an e-mail from Sarah
24 Dawson, of Clifford Chance to me, attaching the mark-up of
25 the surrender deed from Clifford Chance to

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2 aware at the time that 7.16 had been redacted when
3 it was bing sent to LBHI in January 2011?

4 A. I think they had told me they had
5 taken it out, but I can't recall exactly.

6 MR. ISAKOFF: No further questions.

7

8 REDIRECT EXAMINATION BY MR. DE LEEUW

9

10 BY MR. DE LEEUW:

11 Q. Ms. Kendall, I have only a few
12 questions to follow up with you. Earlier, I think
13 there was a document where you used the word
14 "guarantee" and Mr. Isakoff asked you if that
15 reference was a reference to Schedule 4 of the
16 Lehman lease. Do you recall that?

17 A. Yes.

18 Q. When you used the word "guarantee"
19 to refer to Schedule 4 of the Lehman lease?

20 A. Yes, I have used that terminology
21 before. I'm not making a distinction between an
22 indemnity or a guarantee. I use the word
23 colloquially, so to my mind it is an indemnity
24 guarantee.

25 MR. DE LEEUW: Thank you. Could